

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Date: 5/31/96 5/31/96

Surround [REDACTED]

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date:

APR 30 1996

Employer Identification Number: [REDACTED]

Key District: Southeast (Baltimore, MD)

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were created pursuant to a Declaration of Trust dated [REDACTED] by [REDACTED] for charitable purposes within the meaning of section 501(c)(3) of the Code. Clause First(B) of your Trust indenture provides that, in particular, the Trustees shall make contributions, gifts, grants, payments and distributions (collectively "Grants") to relieve financial distress resulting from the illness or other incapacity of the donee or the death, illness, or incapacity of a person in the donee's family.

Your current trustees are [REDACTED]
[REDACTED]
[REDACTED]; and [REDACTED]
[REDACTED].

[REDACTED] is composed of the [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] Offices.

Pursuant to your letter dated [REDACTED], you have submitted a draft of your proposed amendments to your Trust Indenture wherein you have proposed expansion of your Board of Trustees. The expanded Board of Trustees would be comprised of [REDACTED], [REDACTED], [REDACTED], two yet to be selected staff members and [REDACTED] from [REDACTED], outside counsel to you. Therefore, the Board of Trustees would be comprised of

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two partners, one managing director, two staff members (which excludes partners and principals) and one member from your outside law firm.

Clause First(A) of the proposed trust instrument states that the purpose of the Trust is to make contributions, gifts, payments, distributions, and grants (collectively, "Grants") to alleviate financial distress of employees (but not partners or principals) in the [REDACTED] metropolitan region of [REDACTED]

Grants shall be made in the event of financial hardship resulting from death, serious illness, disability, or incapacity of an employee or family member, as well as from certain natural disasters. It further states that all matters relating to the making of grants shall be governed by the by-laws.

You have not adopted by-laws to date. However, pursuant to your letter dated [REDACTED], you have submitted a draft of the by-laws you propose to adopt. The proposed by-laws include the following provisions:

Article IV of the proposed by-laws provides for the establishment of committees.

Section 4.02 provides for the establishment of an applications committee comprised of one (1) trustee and four (4) staff members employed by [REDACTED] in the Human Resources Department of its [REDACTED] metropolitan region. For purposes of these bylaws, the term "staff member" shall exclude partners in [REDACTED] and persons designated as "principals" of [REDACTED]. The Trustees shall appoint the members of the applications committee by resolution. In selecting the staff members who will serve on the committee, the Trustees shall solicit nominations from staff members. The Trustees shall select the members of the applications committee from among those persons nominated. If fewer than [REDACTED] staff members are nominated, the Trustees shall select staff members to serve on the committee.

Section 4.03 provides for the establishment of a grant committee. The committee shall be comprised of one (1) Trustee and four (4) staff members. Two of the staff members shall be from [REDACTED]'s Client Service group and two from the Practice Support group. The selection procedures of the grant committee will be the same as the selection procedures of the applications committee.

Article V of the proposed by-laws describes the grant making process.

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Re: [REDACTED]

Section 5.01 provides the general criteria for grants. It states that you shall make grants to provide partial financial assistance to staff members employed by [REDACTED] in the [REDACTED] metropolitan region who experience financial hardships for reasons beyond their control which are not covered by insurance or other resources. Eligible recipients are full time and part time staff employees who suffer a loss. Neither former or retired employees nor partners or principals of [REDACTED] will be eligible to receive grants. Grant decisions shall be based on the financial need of the employee. Employment related criteria, such as length of service, position with employer, continued service and performance, shall not be factors in determining eligibility or amounts of grants. Grants shall not be used as an inducement to recruitment or retain employees, or to provide compensation for present, past, or future services. Grants shall not disproportionately favor key employees. Information obtained in applications shall not be used in employment decisions.

Section 5.02 provides for the responsibilities of the applications committee. The committee shall receive and review applications for grants. It will then evaluate the financial need of the applicants based on information submitted on the applications and other financial information known to [REDACTED]. The committee will consider factors such as salary, availability of insurance, loss sustained, outside income, and available assets that can be disposed of without causing further personal hardship. The committee will require appropriate documentation. After evaluation, the Committee will make a preliminary recommendation as to approval and amount. In making its recommendations, the committee will be guided by the grant committee's guidelines as to the total amount of awards to be made by the Fund.

Section 5.03 provides for the responsibilities of the grant committee. The committee shall review your total assets and expenses, including existing grant obligations. Based on the Fund's available assets and anticipated income, the committee shall make a recommendation to the applications committee as to the aggregate amount of funds available for awards to be made by you in the ensuing period. After the applications committee has made a recommendation, the grant committee shall review and act on the recommendation. The grant committee may accept the recommendation without change, it may modify the amount of the award, or it may reject the recommendation in full.

Section 5.04 provides for grant approval by the Trustees. The grant committee shall submit its final recommendations to the Trustees for final approval. The Trustees shall review the grant recommendations and may approve the recommendation in full or may modify or reject the recommendation. The Trustees' actions on

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grant recommendations will be made in a meeting as provided in Article III of the bylaws. Once the Trustees have decided on the amount of any grant, they shall direct your bookkeeper to distribute promptly the amount of the grant to the recipient.

Section 5.05 provides for keeping records. The Fund shall maintain records to include names of recipients, amount of funds received, purpose of grants, employment position of the grantee, relationship to trustees, and committee actions.

Your sources of support will be from employee contributions and matching funds from the employer/partners. In addition to the out-of-pocket contributions, you have established a payroll deduction procedure to facilitate employee contributions. The funds transferred to you on [REDACTED] total \$[REDACTED]. This includes \$[REDACTED] in checks received from employees and pledges totaling \$[REDACTED] that will be deducted from employee payroll checks. It is anticipated that additional checks and pledges will be received from the employees from time to time. [REDACTED] partners have committed to match all contributions. The total assets as of [REDACTED] do not include the partners' match. Per information provided in your [REDACTED] letter, as of [REDACTED] employees have contributed \$[REDACTED] and [REDACTED] has contributed \$[REDACTED].

You state that you will send periodic memoranda directly to all staff members, including an annual solicitation for funds. You will inform all staff members of your purposes, identify the Board of Trustees, the committees and their membership, set forth the criteria for obtaining grants and describe the application process. You will inform staff members that you will not consider employment related criteria such as continued employment, length of service, position, or performance as eligibility requirements for grants; that grants will not be used as inducements to recruit or retain employees or to provide compensation for past, present or future services; that grants will not disproportionately favor key employees; and that information in applications will not be used in any employment decisions.

You state that you will maintain books and records that include all data required under Rev. Rul. 56-304, including applicants' employment positions and relationships to the Trustees. Records of all application and grant committee actions will also be maintained.

You state that given your level of funding and your reliance on the generosity of many small givers for additional funds, it is your intention to make modest, one time grants which normally can be expected to only partially meet the demonstrated need of

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the applicant. Therefore, you do not intend to require a subsequent accounting for funds so granted.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for, among others, charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(a)(2) of the regulations defines the term "exempt purpose or purposes," as any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section. Paragraph (d)(1)(i) lists the following as exempt purposes: religious, charitable, scientific, testing for public safety, literary, educational, and prevention of cruelty to children or animals. Paragraph (d)(2) provides, in pertinent part, that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and includes relief of the poor and distressed or of the underprivileged; advancement of religion, education or science; lessening the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization: (a) Limit the purposes of such organization to one or more exempt purposes, and (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(iii) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3). Thus, an organization that is empowered by its articles "to engage in the operation of a social club" does not meet the organizational test regardless of the fact that its articles may state that such organization is

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created "for charitable purposes within the meaning of section 501(c)(3) of the Code."

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(a)-1(c) of the regulations defines "private shareholders or individuals" as persons having a personal and private interest in the activities of the organization.

Section 1.170A-4A(b)(2)(ii)(D) of the regulations defines a needy person, in part, as one who lacks the necessities of life, involving physical, mental or emotional well-being, as a result of poverty or temporary distress.

Revenue Ruling 55-406, 1955-1 C.B. 73, describes an organization created to distribute funds to or for the benefit of dependent widows and children of policemen or firemen who lose their lives in the line of duty. The selection of recipients and the amounts distributable to them are determined in the absolute discretion of the Board of Directors. The organization's sources of funds are membership dues, contributions, and investment income. Funds are not distributed to or for the benefit of members. The revenue ruling holds that the organization qualifies for exemption from federal income tax under section 501(c)(3) of the Code.

Revenue Ruling 75-199, 1975-1 C.B. 160 provides that an organization that restricts its membership to individuals of good moral character and health belonging to a particular ethnic group residing in a stated geographical area and provides sick benefits

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to members and death benefits to their beneficiaries is not exempt under section 501(c)(4) of the Code (and by extension is not exempt under section 501(c)(3).) The organization's income is derived principally from membership dues and is used for the payment of benefits and operating expenses. The revenue ruling further states that the membership organization described is essentially a mutual, self-interest type of organization. Its income is used to provide direct economic benefits to members and any benefit to the larger community is minor and incidental. (Revenue Ruling 55-495, 1955-2 C.B. 259, is modified to remove the conclusion that such an organization was exempt under section 501(c)(4) of the Code.)

Revenue Ruling 81-58, 1981-1 C.B. 331, amplifies Revenue Ruling 75-199, supra. Revenue Ruling 81-58 describes an association composed of officers of a police department in a particular community. The association was created for educational purposes and to provide a lump sum payment to each member upon retirement or a lump sum payment to beneficiaries upon the member's death. The membership benefits program constitutes the association's primary activity. The organization's primary sources of income are from contributions by the general public and through fund raising events. Members are also required to pay a nominal, one-time membership fee upon joining the organization. The revenue ruling holds that the association is essentially a mutual, self-interest type of organization. Its income is used to provide direct economic benefits to members. Although the class of employees benefitted by the organization consists of police officers engaged in the performance of essential and hazardous public services and there is an incidental benefit provided by the organization to the larger community, the fact remains that the primary benefits from the organization are limited to its members. Therefore, the organization is not operated exclusively for the promotion of social welfare within the meaning of section 501(c)(4) (nor by extension for exempt purposes within the meaning of section 501(c)(3).)

Revenue Ruling 56-138, 1956-1 C.B. 202, describes a trust organized and operated by an employer for the primary purposes of paying pensions to its retired employees. The trust also provides certain other benefits to selected employees or beneficiaries, selected on the basis of needs and solely within the discretion of its executive committee. The ruling held that the trust is not organized and operated for charitable purposes and is precluded from exemption under section 501(c)(3).

Revenue Ruling 68-422, 1968-2 C.B. 207, held that an organization created pursuant to the will of a stockholder of a company to pay pension to retired employees of the company does

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not qualify for exemption under section 501(c)(3) because it has not shown its beneficiaries to be members of a charitable class. See also W. W. Watson et al., Executors, v. U.S., 355 F. 2d 269 (3rd Cir. 1966) in which the court held that a trust created by a major stockholder of a company to pay pension of certain employees of the company is not entitled to charitable contributions under the predecessor of section 2055(a).

Your activities under the program are analogous to the activities of the organizations described in Rev. Ruls. 56-138 and 68-422, which were held not to be in furtherance of exempt purposes under section 501(c)(3) of the Code. Also, like the employees in the organizations described in the revenue rulings, [REDACTED] employees as a class are not a charitable group within the meaning of section 501(c)(3). Although some individuals within the group may be proper objects of charity at some point in their lives, [REDACTED] employees as a group are not needy persons as defined in section 1.170A-4A(b)(2)(ii)(D) of the regulations.

Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), held, in part, that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption regardless of the number or importance of statutorily exempt purposes.

You were created by [REDACTED] pursuant to a Trust Agreement for the purpose of making grants to [REDACTED] employees in the event of financial hardship resulting from death, serious illness, disability, or other incapacity of [REDACTED] employees or their family members.

You are controlled by [REDACTED]. Your present Trustees are two [REDACTED] partners and a managing director. Your proposed expansion of your Board of Trustees will continue to provide [REDACTED] with control of your Fund. The majority of your proposed trustees are partners, high ranking employees and [REDACTED]'s outside counsel. Pursuant to your proposed by-laws, you propose to establish two (2) committees. The Trustees will make the final selection of the committee members. Actions suggested by the proposed committees are subject to final approval, modification or disapproval by the Trustees. Amounts to be distributed are determined by the Trustees and disbursements are directed by the Trustees.

Your sources of funds will be from employee contributions and matching funds from [REDACTED].

Based on the above we have concluded that the purpose of the Fund is to benefit the two groups contributing to the fund, [REDACTED] and employees. [REDACTED] benefits because the program provides an

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Re: [REDACTED]

employee benefit that is associated with employment by [REDACTED]. Employees benefit because they have recourse to funds in times of financial hardship when other avenues have been exhausted. Potential employees will consider the advantages of such a program while employees will find it an enhancement to financial security and an incentive to continue employment. In this respect, the provision of financial assistance to employees in times of financial hardship is a program similar to other employee benefit programs such as sick, life, death and accident benefits. It is also similar to employee assistance programs which provide counseling services for stress, drug abuse, legal problems, excessive drinking, etc. While these programs do benefit persons who may be needy or distressed, they also serve the private interests of employers who rely on them to produce a more stable and productive workforce and their employees who receive a benefit not otherwise available to the general public. Your activities provide similar private benefits to [REDACTED] and its employees.

An organization is described in section 501(c)(3) of the Code only if any private benefit arising from its activities is "incidental" in both a qualitative and quantitative sense to the overall public benefit achieved by the activity. To be qualitatively incidental, a private benefit must occur as a necessary concomitant of an activity that benefits the public at large. Such benefits might also be characterized as indirect or unintentional. For example, the benefit to the public cannot be achieved without necessarily benefiting private individuals. See Rev. Rul. 70-186, 1970-1 C.B. 128, in which it was found that it would be impossible to accomplish the organization's charitable purposes without providing benefits to certain private property owners. To be quantitatively incidental, a benefit must be insubstantial when viewed in relation to the public benefit conferred by the activity. The private benefit conferred by an activity or program is balanced only against the public benefit conferred by that activity or program, not the overall good accomplished by the organization. Compare Rev. Rul. 75-286, 1975-2 C.B. 210, with Rev. Rul. 68-14, 1968-1 C.B. 243.

Your activities provide benefits to [REDACTED] which are neither qualitatively nor quantitatively incidental. Your activities do not benefit the public at large.

Accordingly, based on all the facts and circumstances described above, we conclude that you are neither organized nor operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code. Accordingly, you do not qualify for tax exempt status under section 501(c)(3).

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Re: [REDACTED]

You are required to file federal income tax returns on Form 1120 for each year that you have been in existence.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have the right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements. You should send your protest to the following address: Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224. Attn: [REDACTED]. These symbols do not refer to your case but rather to its location.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, if you have any questions concerning reporting requirements, please contact your key District Director.

Sincerely,

(signed) [REDACTED]

[REDACTED]
Chief, Exempt Organizations
Technical Branch 1

[REDACTED]

4/29/96

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